



NATIONAL AUTOMOBILE DEALERS ASSOCIATION
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Legal & Regulatory Group

January 13, 2006

Via E-Mail

Federal Communications Commission
Consumer & Governmental Affairs Bureau
445 12th Street, S.W.
Washington, D.C. 20580

Re: CG Docket No. 02-278, DA 05-2975

Dear Sir/Madam:

The National Automobile Dealers Association (“NADA”) submits the following comments in response to the petition for declaratory ruling filed by the Fax Ban Coalition (the “Coalition”) asking the Federal Communications Commission (“FCC” or the “Commission”) to issue a ruling declaring the Commission’s exclusive regulatory jurisdiction over interstate commercial fax messages. 70 Fed. Reg. 74,014 – 74,016 (December 14, 2005).

NADA represents approximately 20,000 franchised automobile and truck dealers who sell new and used vehicles and engage in service, repair and parts sales. Our members employ more than 1.3 million people nationwide. A significant number of our members are small businesses as defined by the Small Business Administration.

NADA supports the Coalition’s petition that the Commission declare its exclusive authority to regulate interstate commercial fax messages. We also urge the Commission to find that the Telephone Consumer Protection Act of 1991 (“TCPA”) preempts Section 17538.43 of the California Business and Professions Code and all other state laws that purport to regulate interstate facsimile transactions.

Uniform national faxing standards are essential to eliminating conflicting and burdensome state faxing restrictions that many states impose on associations and businesses well beyond their borders. As a national trade association with members throughout the United States, NADA and its for-profit subsidiaries

frequently rely on fax technology as a method of communicating a variety of membership benefits such as newsletters, special offers (that may involve member-only privileges), updates on our national convention, etc. Since our members voluntarily provide their fax numbers to us, they expect (and have paid association dues) to receive membership benefits via fax, some of which may fall under the broad definition of fax advertisements. Essentially, faxing statutes that vary from state to state hinder our efforts to serve members effectively and impose unnecessary compliance burdens on legitimate business communication.

In addition, many of our dealer members, like other retail establishments, are located in metropolitan areas that encompass more than one state. As a result, consumers residing in such metropolitan areas frequently cross state lines to make retail purchases. Automobile dealers frequently serve consumers and/or businesses that live in neighboring states and may contact them via fax after a vehicle purchase or another dealership transaction. Having to comply with a patchwork of more restrictive faxing standards for transactions that do not even occur in the consumer's state interrupts the flow of interstate commerce and impermissibly increases regulatory compliance costs for small businesses. Many of these businesses lack the appropriate in-house expertise and resources to develop the necessary compliance solutions for implementing multi-state regulatory standards. Consequently, they must default to the most restrictive provisions for all their fax advertisements or rely on costly vendor compliance products.

NADA supports the petition's assertion that the Commission should be consistent with its position on telemarketing laws under the TCPA, by holding a similar position with fax laws. Thus, appropriate regulatory standards for interstate faxes should be established at the federal level to limit contradicting state regulations and reduce compliance burdens.

NADA appreciates the opportunity to comment on this matter.

Sincerely,

Smitha Koppuzha
Staff Attorney